

**CONTRACT BETWEEN
THE CITY OF SEATTLE
AND
WASTE MANAGEMENT OF
WASHINGTON, INC.
FOR THE COLLECTION OF
COMMERCIAL WASTE**

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**CONTRACT BETWEEN THE CITY OF SEATTLE
AND WASTE MANAGEMENT OF WASHINGTON, INC.
dba WASTE MANAGEMENT OF SEATTLE
FOR THE COLLECTION OF COMMERCIAL WASTE**

THIS CONTRACT is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington (City) and WASTE MANAGEMENT OF WASHINGTON, INC., dba WASTE MANAGEMENT OF SEATTLE, (Contractor) for the purpose of collecting Commercial Waste.

A. GENERAL PROVISIONS

Section 1. Purpose and Intent of Contract.

The purpose of this Contract is to provide for the collection of Commercial Waste by the City through this Contract with Contractor, and through a similar contract with another commercial collection company. The City intends for the Contractor and the other commercial collection company to be the only providers of Commercial Waste Collection services in the City. Contractor shall collect MSW from Commercial Establishments in a Primary Collection Area defined below in Section 100, and, when requested by the City, in a Secondary Collection Area defined below in Section 105.

Section 10. Length of Contract.

The Contract shall be for a term of 7 years beginning on April 1, 2001, and ending at midnight on March 31, 2008.

The City shall have the unilateral right to extend the Contract for two one-year periods. The City may exercise this option all at once or in one-year or two-year increments. If the City decides to exercise its option to extend, it shall provide Contractor with written notice of such extension at least two (2) years in advance of the end of the initial term of the Contract and, thereafter, upon written notice at least six (6) months in advance of the end of the then existing Contract period.

Section 20. Commencement Date; Transition.

The Contract shall commence on April 1, 2001.

There will be a 3 (three)-month transition period between April 1, 2001 and June 30, 2001, during which customer accounts in the Primary and Secondary Collection Areas shall be sorted out with the other contractor, and during which the respective containers shall be switched or exchanged, in accordance with Section 205.

Section 30. Definitions.

A&E Services means ancillary and elective services associated with collection, as set forth in Attachment E.

Bulky Waste means cartons, boxes, crates, etc., or other MSW materials set out for disposal as overflow to a customer's regular Can, Cart or Detachable collection service.

Can means a watertight, galvanized, sheet metal or plastic container not exceeding 32 gallons in capacity, fitted with at least one sturdy handle and a tight cover equipped with a handle, except in the case of sunken cans, such Can to be rodent and insect proof and to be kept in a sanitary condition at all times. Alternate containers such as bags, boxes and bundles may be used in place of Cans for materials in excess of the customer's primary container. A Can or alternate container shall not exceed 60 pounds for each 32 gallons of nominal capacity.

Can-Unit Pickup means a pickup of a group of Cans made of durable corrosion –resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed twenty gallons, but not to exceed thirty-two gallons or four cubic feet.

Cart (also at times referred to as "toter" or "wheeled container") means (Not Code) a plastic container, not greater than one-half (1/2) cubic yard in capacity and equipped with wheels, handles and a tight-fitting cover. Wheeled containers means containers capable of being mechanically unloaded into the Contractor's collection vehicles.

City means the City of Seattle.

Commercial Establishment means any non-Residential location from which the Solid Waste is collected by the Contractor, and includes the non-residential portion of Mixed Use Buildings.

Commercial Waste means MSW and CDL collected from Commercial Establishments within the City.

Compacted Material means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the collector.

Compactor Disconnect/Reconnect Cycle means the service of disconnecting a compactor from a Drop Box or container prior to taking it to be dumped and then reconnecting the compactor when the Drop Box or container is returned to the customer's site.

Compostable Waste means any organic waste materials that are source separated for processing or composting, such as Yard Waste and Food Waste.

Container Collection means collection of Commercial Waste from Cans, Carts, and Detachable Containers.

Construction, Demolition and Land Clearing Waste; CDL "Construction, Demolition and Land Clearing Waste" or "CDL Waste" means waste comprised primarily of the following materials: "Construction Waste" means waste from building construction such as scraps of wood, concrete, drywall, masonry, roofing, siding, structural metal, wire, fiberglass insulation, other building materials, plastics, styrofoam, twine, baling and strapping materials, cans and buckets, and other packaging materials and containers.

"Demolition Waste" means largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures such as concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of metal. Demolition Waste does not include Special Waste.

"Landclearing Waste" means natural vegetation and minerals from clearing and grubbing land for development such as stumps, brush, blackberry vines, tree branches, tree bark, mud, dirt, sod and rocks.

Contractor means Waste Management of Washington, Inc., dba Waste Management of Seattle, a Washington corporation.

CPI-W means the Consumer Price Index computed by the United States Department of Labor, Bureau of Labor Statistics, for the Seattle-Everett Metropolitan Area for Urban Wage Earners and Clerical Workers (CPI-W), or successor indices, covering the period January through December of each year.

Cycle Time is the elapsed time from time of arrival to time of departure from a Disposal Facility. Cycle Time does not include time spent removing and replacing tarps, setting off cans of compactors and rotating them for dumping, securing tailgates, washing containers, using the restroom or phone, and other similar items.

Detachable Container (also at times referred to as “dumpster”) means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels. Detachable Containers means containers capable of being mechanically unloaded into the Contractor’s collection vehicles.

Disposal Facility means both Public Transfer Stations owned by the City, and Private Transfer Stations at which the MSW shall be compacted and transferred in long haul containers to the long-haul transfer and disposal loading point designated by the City, or, as to CDL, a facility meeting the criteria of section 135.

Drop Box (also at times referred to as “rolloff” or “lugger” or “dino”) means a metal container, with 3-40-cubic-yard-capacity capable of being mechanically loaded onto a collection vehicle for transport to a Disposal Facility.

Dumpster means the same as “Detachable Container.”

Initial Average Haul Time means the calculated average round-trip travel time from the Contractor’s collection routes to the City’s South Recycling and Disposal Center, calculated based on the Contractor’s defined routes and the City’s GIS trip time calculation model.

Mixed Use Building means a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.

MSW means Solid Waste excluding Special Wastes, Unacceptable Wastes, Recyclable Materials, Compostable Wastes and CDL.

Overloaded means a Toter or container whose contents exceed one foot above the top of the Toter or container.

Permanent Service means service provided for a period of more than ninety days.

Primary Collection Area means that area of the City as shown on Attachment A within which the Contractor shall be the exclusive provider of MSW collection services under this Contract,

except in special cases where individual customers have requested, and been granted by the City, the right to receive such services by the City's other commercial MSW collection contractor.

Private Transfer Stations means the transfer station owned and operated by Waste Management of Seattle at 7155 West Marginal Way S.W., the transfer station owned and operated by Rabanco at 3rd Avenue South and Lander Street, and such other transfer stations or facilities that a private entity may operate at present and in the future for handling the City's Waste.

Public Transfer Stations means the City's South Transfer Station at 2nd Ave. South and South Kenyon, the North Transfer Station at North 34th Street and Carr Place North, and such other transfer stations that the City may operate in the future for handling the City's Waste.

Rate means the charges assessed to customers for Commercial Waste collection services provided by Contractor under this Contract.

Recyclable Materials means those Solid Wastes that are source separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to the City's Comprehensive Solid Waste Plan, and that are intended for recycling by the customer and delivered to a recycling facility.

Recycle or Recycling means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

Residence or Residential means any house, dwelling, multiunit residence, apartment house, trailer court or any building put to residential use. The term does not include Mixed Use Buildings

Revised Average Haul Time means the calculated annual average round-trip time from the Contractor's collection routes to the combination of Disposal Facilities selected by the City for all MSW for which the City has transfer site discretion under this Contract, calculated based on the Contractor's defined routes and the City's GIS trip time calculation model.

Roll-off Collection means the collection of Commercial Waste by means of a Drop Box.

Secondary Collection Area means that area of the City as shown in Attachment A within which the City's other commercial MSW collection contractor is the designated primary MSW collection service provider, and in which the Contractor may provide such services only to individual customers who have requested, and been granted by the City, the right to receive such services from the Contractor.

Solid Waste means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yard waste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof. The term includes all liquid, solid and semisolid materials, which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid Waste includes, but is not limited to sludge from wastewater treatment plans, seepage from septic tanks, wood waste, dangerous waste, and problem wastes, as well as other materials and substances that may in the future be

included in the definition of “solid waste” in RCW 70.95.030. Solid Waste does not include Recyclable Materials (including Compostable Waste) collected from Commercial Establishments.

Special Pickup means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck. If a special dispatch is required, time rates as shown in Attachment E will apply.

Special Waste means contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

Street Side Litter Collection means collection of MSW from City-supplied containers located on public right-of-way.

Temporary Service means service that is required for a period of ninety days or less in conjunction with containers or Drop Boxes. Temporary Service and its associated rates are not to be used for the first ninety days of service when the customer requests, and the Contractor provides, service for more than ninety days.

Toter means the same as “Cart.”

Unacceptable Waste means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, by those governmental entities having jurisdiction or any waste the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste includes any waste that is now or hereafter defined by federal law or by the disposal jurisdiction as radioactive, dangerous, hazardous or extremely hazardous waste and vehicle tires in excess of those permitted to be disposed of by the laws of the disposal jurisdiction.

WUTC means the Washington Utilities and Transportation Commission of the State of Washington.

Yard Waste means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four (4) inches in diameter; and biodegradable waste approved for the yard waste programs by the Director. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; and soil contaminated with hazardous substances.

Section 40. City Responsibilities.

The City shall be responsible for:

- a. Establishing service levels and Rates to be charged customers;
- b. Transmitting and updating Commercial Waste customer lists to Contractor in the Secondary Collection Area;
- c. Directing Commercial Waste to Disposal Facilities in accordance with the terms of this Contract;

- d. Paying all transfer fees for Commercial Waste delivered by Contractor to the specified Disposal Facilities pursuant to the terms of Section 490;
- e. Disposing of the Commercial Waste delivered to the specified Disposal Facilities, except for CDL directed to a Disposal Facility by the Contractor pursuant to Section 135;
- f. Approving tip fees and environmental acceptability of CDL Disposal Facilities proposed by the Contractor, or in the alternative directing CDL to a disposal facility;
- g. Initiating Street Side Litter Collection pursuant to Section 122;
- h. Assuming bad debts of customers related to billings for City collection services;
- i. Paying compensation to the Contractor for its collection services pursuant to this Contract;
- j. Paying and remitting applicable taxes which are imposed by a taxing authority directly on Commercial MSW customers to the proper taxing authority; and
- k. Taking enforcement action, as necessary, against unauthorized collection of Commercial Waste.

Section 50. City Representations and Warranties.

The City represents and warrants to Contractor as follows:

- a. Organization and Qualification
 - 1. The City is a municipal corporation and has all requisite corporate power and authority to enter into and perform its obligations under this Contract.
- b. Authority
 - 1. The City has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the City under this Contract in accordance with its terms.
 - 2. This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 60. Contractor Responsibilities.

Contractor shall be responsible for:

- a. Furnishing all skill, labor, equipment, material, supplies and utility services required for providing all services in accordance with this Contract;
- b. Performing all work in a timely, thorough and professional manner;
- c. Delivering all Commercial Waste to a Disposal Facility in accordance with this Contract;
- d. Assisting Commercial Waste customers with service issues

- e. Billing customers for City collection services in accordance with Rates established by the City;
- f. Acting as agent for the City for taxes imposed on Commercial MSW customers, and on rental, collection, and A&E Services for CDL customers, by billing for Rates established by the City, which include taxes, and by forwarding those payments, including taxes, to the City for payment by the City of taxes to the appropriate taxing authority;
- g. In addition to paying appropriate taxes on services not compensated by the City, remitting B&O taxes levied against the Contractor, on the basis of compensation paid to the Contractor by the City, to the appropriate taxing authority;
- h. Transferring customer payments for City collection services (including MSW rental, collection, A&E Services and disposal payments, and CDL rental, collection, and A&E Services, and taxes thereon; but excluding CDL disposal and taxes thereon, and excluding Contractor provided recycling services, and taxes thereon) to the City in accordance with this Contract; and
- i. Complying with all applicable laws and regulations.

Section 70. Contractor's Representations and Warranties.

The Contractor represents and warrants to the City as follows:

- a. Organization and Qualification
 - 1. The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
- b. Authority
 - 1. The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - 2. This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

Section 80. Contractor's Waiver.

Contractor hereby relinquishes and waives any and all claims against the City or rights it may have versus the City with regard to its certificate from the Washington Utilities and Transportation Commission to collect Commercial Waste in the City, except to the extent collection of such Commercial Waste is expressly excluded from this Contract. Contractor also waives any and all claims to compensation from the City based on a claim of taking or any other claim or circumstance related to the Contractor entering into this Contract, or to the City's continued regulation of, and contracting for, the collection of Commercial Waste in the City after the life of this Contract, apart from the payment provisions of the Contract itself. *Provided, however,* the Contractor reserves its option to reactivate its certificate from the WUTC to collect

Commercial Waste in the City, should the City later cease to assert its control over the collection of Commercial Waste.

Section 90. Control of Waste.

Pursuant to its authority under Washington State law, the City by this Contract authorizes the Contractor to act as its agent for the collection and delivery of Commercial Waste from Commercial Establishments in the City, or any other agreed upon location, to Disposal Facilities as directed by the City. The City's rights of ownership and control over the Commercial Waste collected under this Contract vest upon the collection of the Commercial Waste; provided, however, that the original owner has the right of recovery to any valuable items inadvertently discarded that can be reasonably retrieved prior to final disposal.

B. COLLECTION SERVICES

Section 100. Primary Collection Area for MSW Collection.

- a. The City shall be divided in to a Primary and a Secondary Collection Area for Commercial MSW collection along the following line: Royal Brougham to 4th Avenue to Dearborn, Dearborn to I-5, I-5 to Jackson, Jackson to Lake Washington. Attachment A provides a map of the City showing this dividing line. Contractor shall have the area south of this line as its Primary Collection Area for Commercial MSW collection, including service to Terminal 37.
- b. Unless a customer in the Primary Collection Area specifically requests to be a Secondary Collection Area customer for service by the City's other Commercial MSW collection contractor and the request is approved by the City, or is otherwise designated as a Secondary Collection Area customer by the City, all Commercial MSW customers in the Contractor's Primary Collection Area shall receive collection services from the Contractor. All requests by a customer in this area to become a Secondary Collection Area customer for collection by the City's other Commercial MSW collection contractor must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Primary Collection Area for service by the City's other Commercial MSW collection contractor. The Contractor shall be the exclusive provider of Primary Collection Area Commercial MSW collection services for this Primary Collection Area, provided that each customer shall continue to be permitted to self-haul its own MSW.

Section 105. Secondary Collection Area for MSW Collection.

- a. The area north of the dividing line described in Section 100 and shown on Attachment A shall be the Contractor's Secondary Collection Area for Commercial MSW collection.
- b. Unless a customer in this area specifically requests to become a customer of the Contractor and the request is approved by the City, or the City otherwise designates a customer in this area as a customer of the Contractor, the Contractor shall not provide Commercial MSW collection services authorized by this Contract to customers located in the Secondary Collection Area.
- c. In addition, the Contractor shall not solicit or otherwise encourage Commercial MSW customers in the Secondary Collection Area, not excluded from the scope of this Contract, to become MSW customers of the Contractor, and shall be subject to Liquidated Damages in accordance with Section 750 if found by the City to be violating this obligation.

- d. It is expected that MSW customers at Commercial Establishments may themselves initiate requests to the Contractor to become a Secondary Collection Area customer, but all requests by a customer in the Secondary Collection Area to become a MSW customer of the Contractor, including requests that apply to initial service under this Contract, must be referred to and approved by the City, and the Contractor shall notify the City within 24 hours of receiving any request by a customer in the Secondary Collection Area for service by the Contractor.
- e. Contractor may use residential collection vehicles providing service to the City under the "Solid Waste Collection Contract Between the City of Seattle and Washington Waste Hauling & Recycling, Inc.," to collect Commercial MSW from the Secondary Collection Area, *provided* that the weight of any Commercial MSW collected by residential vehicles shall be excluded from the "Tonnage Adjustment Factor" in Section 720 of the residential collection contract.
- f. The Contractor may schedule collection for Commercial MSW customers in the Secondary Collection Area in a manner that is most efficient for the Contractor, while at the same time providing the overall level of service required by the customer. Any disputes that arise between the Contractor and the customer shall be resolved pursuant to Section 127.

Section 110. Excluded Contracts.

The Contract does not necessarily include service to federal facilities, the Seattle Housing Authority, the Seattle School District and the University of Washington. These entities, however, may elect, at any time during the term of this Contract, to receive collection services from the City under this Contract and the Contractor agrees that upon request by the City, those collection services shall be governed by this Contract as long as such request remains in effect. Where no such request is made by the City, the Contractor shall be free to solicit and contract for collection services to such excluded facilities independent of this Contract.

Section 115. Excluded Services.

- a. The Contract does not include collection or processing of Recyclable Materials, nor does it include collection or disposal of Special Waste or Unacceptable Waste.
- b. This Contract is not intended to impose substantive standards affecting the price, route or service of "property" as that term is defined by federal laws. In the event a court decision is issued or legislation enacted which the parties in writing have agreed affects the legal definition of "property" and, as a result, limits the City's ability to enforce the provisions of Section 1 of this Contract, the Contractor may provide collection services as to that "property" as a service excluded from this Contract. The Contractor, however, shall continue to provide Commercial Waste collection services in all other respects pursuant to this Contract.

Section 120. Commercial Waste Collection.

- a. The Contractor shall provide MSW collection services to all Commercial Waste customers at Commercial Establishments who request such service in the Contractor's Primary Collection Area (and in the Contractor's Secondary Collection Area when directed to do so by the City pursuant to Section 105).

- b. Commercial MSW Container Collection services shall be provided at any service level then in effect under the City's codified service levels, so long as the requested service level can reasonably be accommodated at the customer's premise. Any Cart or Detachable Container may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Carts and Detachable Containers shall be owned and provided by Contractor.
- c. CDL collection and disposal services shall be provided City-wide to customers that request such service. CDL services may also be provided City-wide by the City's other Commercial MSW collection contractor.
- d. Roll-off MSW or CDL collection services shall be provided to customers requesting such service so long as the requested service can reasonably be accommodated at the customer's premise. The Drop Box may be owned by the customer as long as it is in good and serviceable shape and is compatible with Contractor's equipment; except as so provided by the customer, all Drop Boxes shall be owned and provided by Contractor, for which the Contractor may charge the customer a Drop Box security deposit.
- e. The Contractor shall make every reasonable effort to accommodate a customer's request for service and to provide customers with the level and type of service which is most convenient and economical to the MSW or CDL customer.

Section 122. Street Side Litter Collection.

- a. The City shall have the option to add Monday – Friday collection of City-owned and maintained street side litter containers in the Contractor's Primary Collection Area to the services provided by the Contractor, beginning no sooner January 1, 2002. The number of City-owned and maintained street side litter containers included in the program may change at any time during the Contract.
- b. The City shall have the option of requiring Saturday or Sunday collection of street side litter containers on special request related to a neighborhood or other special event. For any such Saturday or Sunday collection, the City shall pay the Contractor twice the payment amount established in Section 415 for each container collected.
- c. The City shall provide at least six months' written notice to the Contractor prior the start of street side litter collection service by the Contractor.

Section 123. Public Place Recycling Collection.

- a. Upon request from the City, the Contractor agrees to negotiate terms and conditions for collection of Recyclable Materials from City-owned recycling containers located in public places in a manner similar, but not identical, to Street Side Litter Collection provided in Section 122.
- b. Public place recycling collection shall not be requested by the City prior to January 1, 2002, nor shall such collection be requested by the City without giving the Contractor six month's written notice after specific terms and conditions for providing this service have been agreed upon by the Contractor and the City.

Section 124. Pilot Programs.

The City may wish to test and/or implement one or more new developments in waste stream segregation, materials processing, or collection technology at some point during the term of the Contract. The City will notify the Contractor in writing at least ninety days in advance of the implementation of a pilot program to be performed in one or more collection routes or of its plans to utilize a new technology system on a citywide basis. The costs (or savings) accrued by City-initiated pilot programs will be negotiated prior to implementation, and payments to the Contractor shall be adjusted accordingly. Contractor-initiated pilot programs will require written notification, and approval on the part of the City. Unless otherwise agreed in writing, Contractor-initiated pilot programs will be performed at no additional cost to the City or the Contractor's customers.

Section 125. A&E Services.

The Contractor shall provide A&E Services in accordance with the A&E Services then in effect under the City's codified service levels. The Contractor shall make every reasonable effort to provide customers with the level and type of A&E Services which are most convenient and economical to the customer.

Section 127. Resolution of Availability of Service Disputes.

Any disagreement between a customer and Contractor regarding the services which can reasonably be accommodated at the customer's site shall be resolved by Seattle Public Utilities, including availability of collection and A&E Services, container placement, level of service or any other issue related to collection services. The City shall attempt to mediate and, if necessary, decide the issues, taking into consideration safety of the customer and the Contractor as well as the convenience of the customer and the efficient operation of the Contractor.

Section 130. MSW Transfer/Disposal.

- a. For the first seven years of the Contract, the City will, at the Contractor's option, direct to the Contractor's Eastmont Transfer Station no less than the greater of the following guaranteed quantities, measured percentage shares of actual tonnage or first Contract year tonnage of MSW collected by the Contractor under this Contract:

Contract Year	Guaranteed Share of Base Tons Delivered to Eastmont	Guaranteed Share of Actual Tons Delivered to Eastmont
1	67,500	90%
2	63,750	85%
3	60,000	80%
4	56,250	75%
5	52,500	70%
6	48,750	65%
7	45,000	60%

The Contractor may elect to receive all or a portion of its guaranteed amounts, provided that the Contractor gives the City at least three month's written notification before any change in the tonnage share or tonnage percentage amount it elects to receive.

- b. The City retains sole discretion for directing any remaining MSW collected under this Contract to transfer station(s) of its choice.
- c. In addition to the guaranteed amounts set forth in subsection (a) above, the City may, with the consent of the Contractor, direct any Commercial MSW collected in the City in excess of the amounts defined by Subsection (a) above to the Contractor's Eastmont Transfer Station throughout this Contract. Except in an emergency, the City will provide at least three months' written notification prior to proposed changes in those additional amounts. With the Contractor's consent, the City may also designate the route origins within the City, of those additional tons collected by the Contractor.
- d. When the Eastmont Transfer Station is not open, the Contractor shall first deliver the MSW to a Public Transfer Station, unless the City directs otherwise. In the event the Public Transfer Station is also closed or the City declines to accept the MSW, the waste, the Contractor shall have the option to provide the customer with an additional Cart or Detachable Container until the customer's basic Cart or Detachable Container can be emptied. The Contractor shall empty the primary Toter or Dumpster and remove the additional Toter or Dumpster as soon as practicable after the Eastmont Transfer Station is again open.
- e. The actual quantities of guaranteed tonnage will be tracked on a monthly basis, and deliveries will be adjusted as necessary to achieve the guaranteed minimum tons and percentages. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of a Contract year, the shortfall, at the election of the Contractor, will be made up in additional deliveries to the Contractor's Eastmont Transfer Station during the first quarter of the next Contract year. In the event that actual deliveries fall short of the Contractor's guaranteed quantities of tonnage at the end of the final quarter of the Contract period, the City, at the election of the Contractor, will make up the shortfall with additional deliveries to the Contractor's Eastmont Transfer Station during the quarter following the end of the Contract.
- f. No adjustments will be made if actual deliveries in a Contract year exceed the Contractor's guaranteed quantities of tonnage.

Section 135. CDL Transfer/Disposal.

- a. The City reserves, but does not currently exercise, the right to direct the Contractor to any Disposal Facility of its choosing for disposal of CDL collected under this Contract.
- b. CDL collected under the Contract may be directed to Disposal Facilities by the Contractor, *provided that*:
 - 1. The facilities are environmentally acceptable to the City; and
 - 2. The tip fees are acceptable to the City.
- c. The City's rejection of facilities or tip fees shall not be unreasonably exercised.
- d. At such time as Contractor is unable to designate a Disposal Facility which is acceptable to the City under Section 135c, above, the City will exercise its right to direct the disposal of CDL, *provided*, that the City shall in no circumstance exercise this option to direct CDL to a

City-owned Disposal Facility prior to April 1, 2006.

C. OPERATIONS

Section 200. Coordination; Implementation.

In order to minimize problems during implementation of the Contract, to provide a forum for discussing and resolving any transition and operational problems that may arise, and to update the Operations Plan, the Contractor and City agree to meet on a regular basis as follows:

- a. During the three-month period before the Contract takes effect, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly pre-Contract meetings will be to refine the Transition Plan and the Operations Plan, to seek resolution of any customer service issues, and to discuss promotion, public information and public relations in anticipation of the commencement of the Contract.
- b. During the three-month transition period, the Contractor and City will meet on a weekly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of the weekly transition period meetings will be to refine the Transition Plan and the Operations Plan, to evaluate the Contractor's performance in implementing the Contract, to evaluate container exchange or purchase issues, to review and seek resolution of any customer service issues, and to discuss promotion, public information and public relations.
- c. Following the three-month transition period, the meetings between the Contractor and the City will be held at least on a monthly basis, or on such more or less frequent basis as may be otherwise mutually agreed. The primary purpose of these meetings will be to review day-to-day operations, to refine and revise the Operations Plan, and to discuss promotion, public information and public relations.
- d. Meetings during the transition period will be held at the offices of the City, unless otherwise agreed. Meetings held after the transition period will be held at a mutually agreed location. Each Party will be available for at least 90 minutes per meeting, unless otherwise agreed to in advance. Meetings shall be held during normal business hours.

Section 205. Transition Plan.

In order to effect a smooth transition from the former WUTC regulation to collection of Commercial Waste under this Contract, a Transition Plan shall be developed which shall detail procedures: for easing the customer's transition to a new collector in the Primary Collection Area; for receiving customer information from the City; for exchanging customer service information; and for exchanging or purchasing containers from the City's other Commercial Waste collection contractor. The Transition Plan will be appended to the Contract as Attachment B and shall begin to be implemented as soon as the Transition Plan is agreed to, which in no case shall be later than the start of collections under the Contract.

Section 210. Operations Plan.

A schedule of activities and detailed procedures related to the effective implementation and operation of the Contract is appended to the Contract as Attachment C. This plan shall be known as the "Operations Plan."

Section 220. Night Collection.

The Contractor shall be able to continue to operate during the night (6 p.m. to 7 a.m.). Any additional restrictions or conditions placed on the Contractor's nighttime operations during the term of the Contract shall be considered a change in law, which may result in additional compensation to the Contractor pursuant to Section 825.

Section 230. Traffic Laws; Noise Control.

All Contractor vehicles shall be operated in conformity with the Seattle Traffic Code, SMC Chapter 11. The maximum noise level of motor vehicles during travel shall not exceed the levels set forth in SMC 25.08.430. The maximum noise level while collecting or compacting materials collected under this Contract shall not exceed the levels set forth in SMC 25.08.410.

Section 235. Container Maintenance.

The Contractor shall be responsible for repainting, graffiti paint out and steam cleaning of Cans, Carts, Detachable Containers and Drop Boxes as requested by the City. If the City makes any such request, the Contractor will be compensated at the rates set forth in Attachment G, Item 210.

Section 240. Inventory of Equipment.

The Contractor shall provide the City at the start of the Contract with a complete inventory of its equipment, showing each vehicle (type, capacity, approximate age, vehicle license and identification numbers) and all Cans, Carts, Detachable Containers and Drop Boxes used for performing the Contract. The Contractor shall provide the City with an updated vehicle inventory on a monthly basis, which shall incorporate changes within sixty (60) days of their occurrence, and an updated container inventory on an annual basis.

Section 250. Ownership of Equipment.

All vehicles, facilities, equipment and property used in the performance of this Contract shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements entered into during the term of the Contract shall provide that, in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

Section 260. City Option to Purchase Containers.

The City shall have the option to purchase all the Contractor's Cans, Carts, and Detachable Containers used for performing the Contract at the end of the Contract period. The purchase price shall be equal to the recorded purchase cost of those containers net of accumulated

depreciation as of December 31, 2000, according to the Balance Sheet and supporting schedules in the Contractor's Fixed Asset Inventory, consistent with the total container asset value included in the most recent Annual Report from Waste Management to the WUTC, as set forth in Attachment I, adjusted for 1) the change in the CPI from December 31, 2000, until the end of the Contract period (at 100%), and 2) the percentage changes in the numbers of commercial containers of each size served by Waste Management from December 31, 2000 until the end of the Contract period, *provided* that the number of each size of new containers acquired by Waste Management during 2000 that will be included in the calculation above will be no greater than 15% of the Waste Management container inventory as of December 31, 2000.

Section 270. Contractor's Office.

The Contractor shall maintain within King County an office with local telephone service and such staff as needed to take care of complaints, billing issues, requests for missed collections and other coordination with City staff. Phone service shall include multiple lines and voice mail and e-mail. Any voice mail messages shall be returned by the Contractor's office within sixty (60) minutes. The Contractor's customer service hours shall be from 8 a.m. to 4:30 p.m., Monday through Friday.

D. RATES TO CUSTOMERS

Section 300. City Sets All Rates to Customers.

The City shall retain the authority to set Rates for all services to customers under this Contract. Rates shall be established by City ordinance. The City's rate ordinances shall specify the container size categories and service levels (frequency of services) that shall be made available to the customers by the Contractor. The Rates, service categories and service levels offered by the City may be changed at any time and as many times during the Contract as the City deems appropriate, so long as after the start of the Contract the Contractor is provided sixty (60) days notice of any change of Rate, service category, or service level. Customers shall be charged for services pursuant to rates established by the City.

Section 310. Rates for Primary Collection Area.

Rates and service levels shall be established by City ordinance for the Contractor's Primary Collection Area. Unless designated a Secondary Collection Area customer by the City, all customers in the Contractor's Primary Collection Area shall be afforded and charged for services pursuant to the City's Primary Collection Area Rate and service level ordinances.

Section 320. Rates for Secondary Collection Area.

- a. Rates and service levels shall be established by City ordinance for the Contractor's Secondary Collection Area. Unless a Commercial MSW customer in the Secondary Collection Area is designated a customer of the Contractor by the City, the Contractor shall not provide Commercial MSW collection services in the Secondary Collection Area. For all Secondary Collection Area services provided by the Contractor, however, the customers shall be afforded and charged for services pursuant to the City's Secondary Collection Area Rates and service levels.
- b. The Secondary Collection Area Rates may be established by the City in any amount. If the Rates for the Secondary Collection Area in any category are less than fifteen (15) percent

above the Rates for the same service level in the Primary Collection Area, then the payment provisions of Section 435 shall apply.

Section 330. Rates for A& E Services.

Rates for A&E Services shall also be established by City ordinance for both the Primary and Secondary Collection Areas. Customers shall be charged for A&E Services pursuant to Rates established by City ordinance.

Section 340. Establishing Different Service Levels.

The City shall have the authority to establish different service levels by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised service levels shall be determined pursuant to Section 450.

Section 350. Establishing Different Types of Service.

In addition to creating different service levels under Section 340, the City shall have the authority to establish different types of Commercial Waste collection service by ordinance at any time during the term of the Contract. The City will provide the Contractor no less than six months' written notice prior to requiring the Contractor to begin providing and collecting such new services. Compensation to the Contractor for any new or revised MSW or CDL collection services shall be determined pursuant to Section 450.

Section 360. Recycling.

The City reserves the right to promote and contract for Recycling of any component of the Commercial Waste stream at any time during the term of the Contract. The City shall be under no obligation to contract with the Contractor for the collection of any such Recyclable Materials.

E. COMPENSATION TO CONTRACTOR

Section 400. Compensation for MSW Container Collection.

- a. Unless otherwise stated in the Contract, the City will compensate the Contractor on a monthly basis for collection from all Commercial customers receiving MSW Container Collection service, based on a per unit schedule defining the payment per collection pickup for each level of service. The per unit payments defined by that schedule will be multiplied by the number of collections of each service level performed by the Contractor during the preceding month, to derive the monthly compensation for Commercial MSW Container Collection.
- b. The initial per unit payment schedule for Container Collection in the first Contract year is shown in Attachment D.
- c. The per unit payment schedule in Attachment D reflects an estimated average weight per cubic yard of 155 pounds for the Contractor's MSW Container Collection customers.
- d. A revised per unit payment schedule for Container Collection will be established after the first contract year and will become the basis for subsequent monthly compensation

calculations and for establishing the amount of any true-up adjustments as provided for in Section 408.

- e. The format for Contractor reporting of monthly collection service levels, and overall billing procedures are set forth in Sections 500 through 540.

Section 403. Compensation for A&E Services.

- a. The City will compensate the Contractor on a monthly basis for A&E Services based on the per unit payment and the types of A&E services listed in Attachment E. The per unit payment defined by that schedule will be multiplied by the number of A&E Services performed by the Contractor during the preceding month, to derive the monthly compensation for A&E Services.
- b. The Contractor will be compensated only for those A&E Services set forth in Attachment E. In setting Rates, however, the City may establish charges to customers for A&E Services which are not set forth in Attachment E, and for which the Contractor would receive no additional compensation.
- c. The format for Contractor reporting of monthly A&E Services, and overall billing procedures are defined in Section 500 through 540.
- d. For the first Contract year, per unit payments for A&E Services will be at the levels listed in Attachment E.
- e. Payment for A&E Services shall be adjusted annually each year of the Contract in accordance with the procedures set forth in Section 470.

Section 404. Procedure for Establishing Average Weight Per Cubic Yard.

- a. The per unit payments in Attachment D are based on an estimated average weight of 155 pounds per cubic yard for Contractor's Commercial MSW Container Collection customers. The actual average weight per cubic yard will be established based on City-wide data from the first Contract year in accordance with the procedures set forth in this Section, and then will become the basis for adjustments under Section 407 for the remaining term of the Contract.
- b. Average Weight Per Cubic Yard. The average weight per cubic yard will be derived from City-wide data on:
 - 1. Commercial MSW tonnage collected by the Contractor and the City's other Commercial MSW collection contractor in the City of Seattle from Can Cart and Detachable Container customers from April 1, 2001 through March 31, 2002, and
 - 2. Cubic yards of subscribed Commercial MSW service and billed Bulky Waste collected by the Contractor and the City's other Commercial MSW collection contractor from Can, Cart and Detachable Container Commercial Waste customers in Seattle from April 1, 2001 through March 31, 2002.
- c. Source of Contractor's MSW Tonnage Data. The source of data on Commercial MSW tonnage collected by the Contractor in Seattle from April 1, 2001 through March 31, 2002 will be electronically transferred records of the weights of Commercial MSW delivered by

Contractor's Commercial MSW route collection vehicles' tipped weights at any Disposal Facilities used during that period. In addition, the Contractor will provide copies of the weight slips provided to the Contractor's Commercial MSW collection vehicles when they dispose of each load collected in the City of Seattle. The Contractor will arrange for electronic data transfer of records from Eastmont Transfer Station, and will provide a complete copy set of the weight slips from all Disposal Facilities used to the City on a monthly basis, including information on date of disposal, time of disposal, and number assigned by the Contractor to the route. The City will likewise arrange for electronic data transfer to the Contractor of records of the Contractor's Commercial MSW disposal at the City's Disposal Facilities.

1. Data from these sources will be compared to 1) the corresponding data for the two calendar years preceding the start of the Contract, and 2) the monthly submittals made by the operator of the Eastmont Transfer Station during those two calendar years to the Seattle-King County Department of Public Health, which define all waste streams tipped at the Eastmont Transfer Station, of Commercial MSW, excluding CDL, disposed of at that facility, for verification.
- d. Source of Contractor's Cubic Yards Collected Data. The source of data on total cubic yards of Commercial MSW collected in Seattle from April 1, 2001 through March 31, 2002 will be Commercial MSW billing data provided by the Contractor in monthly submittals to the City. Cubic yards included in the count will be subscribed cubic yards of container service to Can, Cart and Detachable accounts (adjusted for compaction ratios), collected by the Contractor's Commercial MSW collection route vehicles, plus billed cubic yards of Bulky Waste collected from those accounts. The City may survey a sample of customers, or conduct a spot-audit of Contractor routes, to verify customer service levels identified in the Contractor's billing data submittals.
- e. In the event of any apparent discrepancy, the City and the Contractor will review the records, and attempt to agree on a specific average weight per cubic yard estimate. If disagreement remains, the matter will be addressed pursuant to the provisions of Section 830.

Section 407. Compensation Based on Average Weight Per Cubic Yard.

- a. Per unit payment amounts for Commercial MSW Container Collection shall be adjusted once following the first year of service under this Contract using the average weight per cubic yard defined by the procedures set forth in Section 404. The revised per unit payment structure for the remaining term of the Contract will then be calculated based on the baseline tariff rates in Attachment D, adjusted downward in three steps, to:
 1. exclude the portion of those tariffs associated with disposal costs;
 2. exclude the portion of those tariffs associated with taxes; and
 3. reduce the remaining net payments by 15% at each service level.
- b. These three adjustments will be calculated as follows:
 1. The adjustment for exclusion of disposal costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in

Section 404(in tons) by the size of the container picked up (in cubic yards), by \$77.87, and ii)subtracting that amount from the baseline tariff rate in Attachment D.

2. The adjustment for exclusion of tax costs at each level of service will be made by i) multiplying the average weight per cubic yard established by the procedures set forth in Section 404 (in tons) by the size of the container picked up (in cubic yards), by \$11.70, and ii) subtracting that amount from the baseline tariff rate in Attachment D subtracted from the original tariff.
3. Finally the tariff rates at each collection service level that result from the two preceding adjustments will be multiplied by 85% to determine the revised initial year per unit payments for Commercial MSW Container Collection.

Section 408. True-up Procedure for Recalculating First Year Compensation.

- a. When the revised initial year per unit payments for Commercial MSW Container Collection have been calculated pursuant to Section 407 for the period April 1, 2001 through March 31, 2002 the compensation from the City to the Contractor for the first twelve months of the Contract will be recalculated, based on the revised initial year per unit payments for Commercial MSW Container Collection..
- b. Any difference between the resulting recalculated compensation and the compensation actually made for Container Collection service in the first twelve months of the Contract will be applied to the twelve monthly payments to the Contractor from the City for the Contract period July 1, 2002 through June 30, 2003. If the adjustment is in the Contractor's favor, one-twelfth of the difference will be added to the City's compensation payment each month; if the adjustment is in the City's favor, one-twelfth of the difference will be subtracted from the City's compensation payment each month.

Section 410. Compensation for Drop Box/Roll-off Collection (MSW or CDL).

- a. The City will compensate the Contractor on a monthly basis for Drop Box service at the per unit payment rates shown in Attachment F. The per unit payments defined in that attachment shall be multiplied by the number of Drop Box collection services performed by the Contractor during the preceding moth, to derive the monthly compensation for Drop Box services.
- b. Each of these per unit payments for Drop Box service shall be adjusted annually during the term of this Contract in accordance with the provisions of Section 470.

Section 415. Compensation for Street-Side Litter Can Collection.

- a. If the City exercises its option to add street side litter collection to the services covered under this Contract, pursuant to Section 122, it will pay the Contractor:
 1. \$1.50 per pickup for all containers, whether employing replaceable bags or internal cans, and whether the replaceable bags or internal cans are removable through the top or through a side panel.
 2. If the City requires the Contractor to perform litter can collection on Saturday or Sunday, the City shall pay the Contractor twice the payment amount established in this Section for each container collected.

- b. The per-container payment for litter can collection in the initial year of the City's exercise of its option will be adjusted annually from the amount set forth in subsection (a) above by multiplying the per container payment by 100% of the change in the CPI-W from December 31, 2000 until the initiation of such service. Thereafter, the per container payment for litter can collection will be adjusted annually each year during the term of this Contract according to the CPI adjustment clause set forth in Section 470 of this Contract.
- c. Any MSW collected by the Contractor from street-side litter cans will be included in the MSW tonnage upon which the percentage of tonnage guarantees are calculated, under the provisions of Section 130.
- d. If the City exercises its option to add litter can collection to the services covered under this Contract, compensation for such collection will be made on the same monthly schedule as compensation for other collection services covered under this Contract.

Section 420. Can, Cart and Detachable Container Rentals.

The City will compensate the Contractor for temporary and permanent Can, Cart and Detachable Container rentals at the daily and monthly per container payment rates shown in Attachment D, as adjusted annually according to the provisions of Section 470.

Section 422. Drop Box Rentals.

The City will compensate the Contractor for temporary and permanent Drop Box rentals at the daily and monthly per container payment rates shown in Attachment F, as adjusted annually according to the provisions of Section 470.

Section 430. Compensation for Collection in Secondary Collection Area.

- a. The Contractor will receive base payments for Commercial MSW collection service to customers in its Secondary Collection Area according to the compensation structure in Sections 400 through 422, and an additional amount for customers in its Secondary Collection Area depending on their location as set forth below.
- b. For those Commercial MSW Container Collection service customers located north of the Ship Canal collected during the day (7 AM to 5 PM), the Contractor will be paid an additional amount equal to i) 50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii) \$5 per stop per day, up to a maximum of \$20 per collection day.
- c. For those Commercial MSW Container Collection service customers located north of the Ship Canal collected at night (5 PM to 7 AM), the Contractor will be paid an additional amount equal to i) 50% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given service level, plus ii) \$15 per stop per day, up to a maximum of \$60 per collection day.
- d. For those Commercial MSW Container Collection service customers located more than ½ mile from the service boundary and south of the Ship Canal the Contractor collected at any time will be paid an additional amount equal to i) 75% of the difference between the City's Secondary Collection Area Rates and the City's Primary Area Collection Rates for any given

service level plus ii)\$15 per stop per day, up to a maximum of \$60 per collection day.

- e. The Contractor must provide the City with billing statements that include service addresses and phone numbers for all Commercial MSW Secondary Collection Area customers as the basis for payment for service delivered in its Secondary Collection Area.
- f. In addition, the Contractor must notify the City within 24 hours of any existing Commercial MSW customers in its Primary Collection Area who have requested service by the other Commercial MSW collection contractor, and of any Commercial MSW customers in its Secondary Collection Area who have requested service by the Contractor.

Section 435. Compensation Adjustment for Primary/Secondary Rate Differentials.

- a. The City reserves the right to establish Rates that will apply to customers receiving Commercial MSW service from other than their Primary Collection Area provider.
- b. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are 15% or more higher than for the same service level in the Primary Collection Area, the Contractor will receive no additional compensation, beyond that established by the procedures in Section 430.
- c. For Commercial MSW service to customers in its Secondary Collection Area whose Rates for service are less than 15% higher than for the same service level in the Primary Collection Area, the City will compensate the Contractor by an additional amount equal to the number of percentage points by which the differential in rates is less than 15% higher multiplied by the Contractor's total compensation for service to customers receiving that level of service.
- d. Any such compensation will be calculated and paid monthly for the period for which the differential in Rates remains less than 15%, or prorated for partial months if necessary. If the Rates fall short of the 15% differential for more than one service category, the Contractor will be paid for each such service level category according to the formula set forth above.

Section 440. Compensation Adjustment for Revised Average Round-trip Haul Times.

- a. The City reserves the right to direct the non-guaranteed portion of MSW collected by the Contractor described in Section 130(b) to any Disposal Facility of its choosing. For purposes of this section, it will be assumed that the City will initially direct all such non-guaranteed MSW to its South Recycling and Disposal Station (SRDS).
- b. After the Contractor has established its collection routes in its Primary Collection Area, an "initial average round-trip haul time" will be determined for transfer trips from the mid-points of those routes to the City's SRDS and back again. Average round-trip haul times will also be determined for transfer trips from the mid-points of those routes to each other Disposal Facility in the City
- c. The mechanism for determining the initial average round-trip haul times will be the City of Seattle GIS model developed for residential route haul time calculations, modified to incorporate the new route location information identified for the Commercial MSW collection routes.

- d. Whenever the City elects to direct portions of the waste collected under Section 130(b) of this Contract to Disposal Facilities other than SRDS, a “revised average round-trip haul time” will be calculated by using a weighted average of the shares of non-guaranteed tons directed to each Disposal Facility times the average round-trip haul times calculated for each Disposal Facility.
- e. Any resulting difference between the initial and revised average round-trip haul times will be the basis for Contractor compensation adjustments.
- f. Contractor compensation adjustments will be based on the following calculated cost impact formula:

Calculated cost impact payment

= \$60.00 per hour

*(revised average round-trip haul time), in hours

*total transfer round trips per month

* percentage of Contractor’s Commercial MSW tonnage redirected

[The rate per hour will be adjusted annually by the CPI factor defined in Section 470.]

For increases in average round-trip haul time, the Contractor will receive 100% of the calculated cost impact as a compensation adjustment to be made on that month’s compensation from the City. For decreases in average round-trip haul time, the City will receive 75% of the calculated cost impact (in the form of reduced payments to the Contractor), and the Contractor will retain any remaining cost savings.

An example calculation of this cost impact formula is provided in Attachment G.

- g. The City will only direct trucks to Disposal Facilities that are open at the time the truck is full.

Section 445. Compensation for Excess Cycle Time.

The Contractor will be compensated an additional amount for each Cycle Time for MSW collected under this Contract at a Public Facility or Private Facility not owned by Contractor that is greater than 15 minutes. Compensation adjustments for excess Cycle Time will be calculated monthly. The additional amount that the Contractor will be compensated for excess Cycle Time will be determined based on Contractor’s submittal of all relevant scale transaction receipts for the month in question.

Compensation for excess Cycle Time =

\$60.00 per hour

* the sum of total hours in excess of allowable Cycle Time.

Section 450. Mechanism for Establishing Base Compensation for New Service Levels or Types of Service.

- a. The City retains the discretion to establish new service levels (e.g., ¾ yard dumpster) or types of service at any time during the Contract. Compensation for any new service level or type of service will be based on the following:

1. For a new service level (e.g., $\frac{3}{4}$ yard dumpster), compensation to the Contractor shall be at the next highest level of service already established (e.g., 1 yard dumpster).
 2. For a different type of service (e.g., shared 4 yard Container Collection service at the end of an alley for multiple Commercial MSW customers) the per-unit payment shall be at the same amount as the most comparable existing service (e.g., Attachment D, 4yd noncompacted service).
- b. If the City establishes new commercial recycling services for which the Contractor (1) has no contract service relationship with the City for such commercial recycling service and (2) which results in greater than 10% reduction in annual solid waste tonnage over the pre-program period, the Contractor may invoke the procedures set forth in Section 830, *provided*, however, that the City may in such case terminate the Contract with 18 month's notice rather than the 3 year's notice otherwise provided in Section 830.

Section 470. Annual CPI Compensation Adjustment.

- a. A CPI adjustment factor will be applied to the per unit payments for Container Collection and Drop Box services; to all A&E Services, rental and maintenance fees, all hourly rates; and to any other rate that is fixed at the beginning of the Contract, unless otherwise specified.
- b. The CPI adjustment will be made annually effective April 1 of each year, with the first adjustment effective April 1, 2002. The annual adjustments will be based on a percentage of the change in the Seattle-Area CPI-W during the preceding calendar year in an amount determined by the formula below:
 - 1) For each subsequent adjustment, that percentage of the change in the CPI-W will be equal to the lesser of:
 - i. 55% plus four times the absolute value of the percentage change in the CPI-W over the preceding calendar year, or
 - ii. 90%.

Section 480. Compensation for Transition Services.

The City will pay the Contractor \$450,000, payable in two installments of \$250,000 on April 9, 2001 and \$200,000 October 8, 2001, to compensate the Contractor for costs associated with the transition from WUTC regulation to City contract. These payments will constitute the entire compensation for costs incurred by the Contractor for transitional activities, including, but not limited to, the costs of exchanging containers with the other Commercial MSW collection contractor, changes to the Contractor's billing systems, and collection route redesign.

Section 490. Compensation for MSW Transfer and Short Haul.

- a. For transfer and short-haul of the guaranteed tonnage described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section A: "Guaranteed Share of Tonnage."
- b. For transfer and short-haul by the Contractor of any additional commercial MSW tonnage

described in Section 130 to the long-haul transfer and disposal loading point designated by the City, the City will compensate the Contractor according to the payment schedule defined in Attachment J, Section B: "Additional Tonnage."

- c. The per-ton payments for tonnage transferred at the Contractor's Eastmont Transfer Station will be adjusted annually according to the CPI adjustment terms defined in Attachment J.
- d. The City's payments to the Contractor for transfer and short haul defined in this section will be made on a monthly basis.
- e. The Contractor shall maintain the following data and transmit it to the City as back-up for transfer payments:
 - 1. Date of transfer service;
 - 2. Truck type and truck number delivering each load;
 - 3. Route identification for the truck's regularly assigned route;
 - 4. Disposal Facility location;
 - 5. Inbound time and weight;
 - 6. Outbound time and weight; and
 - 7. Any additional information as may be reasonably necessary to track transfer delivery, tonnage and costs.

Section 495. Payment Mechanism.

- a. No later than the 5th of each month, the Contractor will submit an invoice to the City, for services provided during the prior month. This invoice will be paid by the City to the Contractor by wire transfer on or before the 25th of the same month (or 20 days after the invoice date, if the invoice is presented late). This invoice will be at a level of detail that will allow the City to determine the type (i.e., MSW or CDL), container size, frequency and per unit compensation associated with each service.
- b. Compensation paid by the City to the Contractor for services under this Contract, plus CDL disposal fees and direct taxes on those fees, will determine the taxable income under this Contract for which Contractor will be responsible for paying B&O taxes. Other than revenues from disposal fees passed through to Commercial Waste customers directly by the Contractor for CDL services, it is the intent of both the City and the Contractor that Contractor's taxable income for services under this Contract is not based upon the remittances paid by the Commercial Waste customers to the Contractor acting as collecting agent for the City, including those taxes described in Section 520. The Contractor and the City will renegotiate the terms of the Contract pursuant to Section 830 to comport with the intent of this provision, should the allocation of tax responsibility change as a result of change of law, should the Department of Revenue take a position inconsistent with the intent of this provision regarding Contractor's obligations to pay B&O taxes, or should any other taxing authority take a position contrary to this provision.

F. CUSTOMER SERVICE, BILLING, CASH TRANSFERS

Section 500. Customer Services.

In addition to other customer service provisions in the this Contract, the Contractor shall provide the following services to Commercial Waste customers:

- a. Set up of new accounts for each commercial customer to be serviced by the Contractor in the Contractor's Primary Collection Area;
- b. Set up of new accounts for each Commercial Waste customer to be serviced by the Contractor in the Contractor's Secondary Collection Area, provided the requested service is approved by the City as required in Section 105;
- c. Provision of containers for each Commercial Waste customer;
- d. Provision of itemized monthly invoices to each Commercial Waste customer;
- e. Receipt and processing of payments from all Commercial customers serviced by the Contractor;
- f. Provision and maintenance of systems and personnel for managing customer inquiries and complaints;
- g. The Contractor shall maintain a record of all customer service requests and complaints, which shall be available to the City for inspection and copying during regular business hours;
- h. If during any 30 day period the City receives more than 5 complaints that customers are unable to receive a response from the Contractor by telephone within one business day, such complaints will be investigated unless the Contractor has an explanation acceptable to the City for such complaints, and the Contractor may be required to increase the capacity of telephone equipment, and/or increase the number of customer service representatives; and
- i. If during any 30 day period the City receives more than 10 complaints that customers have failed to receive a response from the Contractor by telephone within one business day of calling, unless the Contractor has an explanation acceptable to the City for such complaints, the City shall impose liquidated damages per Section 750. The City shall maintain a record of the identity and service location of each complaining customer and the nature of the complaint.

Section 510. Billing to Customers.

Commercial Waste customers will be billed on a monthly basis at the rates set by the City as set forth in Section D. The Contractor will be responsible for billing each Commercial Waste customer serviced in its Primary Collection Area and its Secondary Collection Area. The Contractor will have authority to bill Commercial Waste customers for services performed, including applicable taxes for which Contractor is acting only as collection agent for the City. The Contractor will have the option of including on the invoice bills for other services provided by the Contractor not under this Contract. With regard to services provided during the 90 day period prior to the start of the Contract, the Contractor may at its discretion bill for past due

amounts attributable to services provided by either the Contractor or the other contractor supplying Commercial Collection service to the City. Billing procedures and forms of invoices will be established in the Transition Plan and the Operations Plan, as appropriate.

Section 520. Payment Receipt and Remittance to City.

- a. Application of Funds The Contractor will be responsible for collecting all payments from its designated Commercial Waste customers served by the Contractor. Account balances will be divided into six (6) categories, and the payment received by the Contractor from each customer will be applied in the following order:
 1. specific billed services to that customer, prior or current, as directed in writing by the customer, whether or not performed pursuant to this Contract;
 2. balances carried forward by the Contractor or the other contractor supplying Commercial Collection service to the City from pre-Contract services to that customer, for a period of ninety (90) days from the commencement of services under this Contract;
 3. prior Commercial Waste services to that customer performed pursuant to this Contract and billed for the City, including any late penalties and interest as determined by the City;
 4. prior other services to that customer performed by Contractor outside the scope of this Contract or services to that customer billed by the Contractor directly (e.g., CDL disposal fees);
 5. current Commercial Waste services to that customer performed pursuant to this Contract and billed for the City; and
 6. current other services to that customer performed by Contractor outside the scope of this Contract provided or billed by the Contractor directly.
- b. City not responsible for Contractor's debts The City will not be responsible for collection of debts owed by Commercial Waste customers to the Contractor for services performed by Contractor outside the scope of this Contract except for the employment of collection mechanisms as set forth in Section 530.
- c. Remittances to City shall be as follows:
 1. Payments received by the Contractor from its designated Commercial Waste customers as provided in Section 60(h) will be remitted by the Contractor to the City by wire transfer on the fourth day following posting to the customer account by the Contractor.
 2. NSF checks and fees and other non-clearing deposits will be charged back to the City, to the extent they were previously credited to the City.
 3. Disputed billings will be reconciled by the Contractor's billing department, provided that, at the City's request, a representative of the City shall join the Contractor in dealing with the disputed bill and, in that event, the City's determination of billing for City services shall be binding.

d. Treatment of Certain Taxes and Other Excises

1. The Parties agree that Contractor will act as collecting agent for the City with regard to the following taxes and any other taxes imposed by law on the Commercial Waste customers for which the City has responsibility of remittance to the appropriate taxing authority, except for the portion of these taxes that are based either directly or indirectly on CDL disposal fees, which are passed though to the customers and collected and paid directly by the Contractor:
 - i. Household Hazardous Waste Collection Fees, corresponding to the fees currently contained in Seattle Municipal Code § 21.44.060D;
 - ii. Seattle Solid Waste Collection Taxes contained in Seattle Municipal Code, §5.48.055;
 - iii. State Solid Waste Collection Taxes; and
 - iv. Retail Sales Tax levies on container rental charges.
2. Nothing in this Contract is intended to impose liability as a taxpayer on Contractor for amounts attributable to the taxes described in this subsection, and nothing is intended to circumvent the existing regulatory structure with regard to such taxes. The Parties wish to establish a system under which Contractor will act solely as a collecting agent for the benefit of the City in the collection of such taxes. If the Contractor fails to collect such taxes the customer or the City, as the case may be, and not the Contractor, will bear the ultimate tax liability.
3. The Parties agree that if the regulatory structure governing the imposition and liability for such taxes changes, so as to prohibit or otherwise interfere with Contractor acting solely as collecting agent, the Parties will renegotiate the terms of the Contract governing payment and collection of such taxes and, if necessary, make any adjustment to Contractor's compensation as may be necessary.0

Section 530. Bad Debts.

All past due amounts that accrue from the services provided by the Contractor under this Contract or past due amounts for Commercial Waste service provided during the 90 day period prior to the start of the Contract, either by the Contractor or by the other contractor supplying Commercial Collection service to the City will be pursued for collection by the Contractor for a ninety (90) day period as follows:

- a. If no payment has been received at thirty (30) days from the date of the original invoice, send a second invoice with dunning message and late penalties and interest as determined by the City.
- b. If no payment has been received at forty-five (45) days from the date of the original invoice, send a collection letter.
- c. If no payment has been received at fifty-five (55) days from the date of the original invoice, call the customer.

- d. If no payment has been received at sixty-five (65) days from the date of the original invoice; call the customer and notify the customer that service is being suspended, place the account on suspension and notify the City, *provided* no service shall be suspended during April 2001.
- e. If no payment has been received at seventy-five (75) days from the date of the original invoice, send final collection letter or call the customer.
- f. If no payment has been received at ninety (90) days from the date of the original invoice, the account will be closed and the balance, including accrued interest, will be forwarded to the City for collection.

Section 540. Record Keeping and Reporting.

The Contractor shall maintain complete and accurate books of account and records with respect to the performance of its obligations under this Contract including, but not limited to, all correspondence and invoices, transaction tickets, or receipts documented by books and records kept at Contractor's principal place of business. Contractor also agrees to maintain a system of internal accounting controls sufficient to ensure that all transactions are properly authorized, recorded, processed, summarized and reported and that all assets of the Contractor and the City are adequately safeguarded. The City shall have the right during reasonable business hours to inspect and audit such books, records and internal accounting controls. All books, accounts, and records required to be maintained under this Section shall be preserved intact without alteration during the term of this Contract and for a period of twelve (12) months following the termination of this Contract.

G. EQUAL OPPORTUNITY/ NON DISCRIMINATION

Section 600. Equal Employment Opportunity.

- a. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
- b. The Contractor will, prior to commencement and during the term of this Contract, furnish to the Executive Services Director (as used in this section, Director means the City's Executive Services Director or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the Contractor in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and

records requested by the Director for the purposes of investigation to determine compliance with this provision.

- c. If upon investigation the Director finds probable cause to believe that the Contractor has failed to comply with any of the terms of these provisions, the Contractor and the contracting authority shall be so notified in writing. The contracting authority shall give the Contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the terms of these provisions.
- d. Failure to comply with any of the terms of these provisions shall be a material breach of this Contract.
- e. The foregoing provisions will be inserted in all subcontracts for work covered by this Contract.

Section 610. Equal Employment Opportunity – Implementation.

- a. The Contractor shall obtain in writing from each subcontractor or participant in a joint venture an agreement to comply with the terms of Equal Employment Opportunity set forth in Section 600.
- b. The Contractor shall be responsible for the compliance of subcontractors or joint ventures. Appropriate sanctions for noncompliance will be imposed on the Contractor. The requirements for the Contractor apply to subcontractors, regardless of tier. The Contractor's responsibility includes obtaining equal employment opportunity documentation from subcontractors or joint ventures and reviewing this documentation to assure its validity and compliance. Contractor shall submit such documentation from subcontractors and joint ventures concurrently with the Contractor's own submittals.

Section 620. Non-Discriminatory Service.

The Contractor shall not discriminate against any customer in the provision of service or quality of service on account of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide qualification to or for service. The Contractor shall provide comparable service throughout both the Primary and Secondary Collection Areas without regard to racial, ethnic, or cultural characteristics or relative standard of living of the neighborhood.

Section 630. Non-Discrimination in Employee Benefits.

- a. The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners (other than employees subject to collective bargaining agreements where the employer does not provide health benefits directly) as the Contractor provides to its employees with spouses. At the City's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract.

- b. Any violation of this Contract Section 630 shall be a material breach of the Contract for which the City may:
 - 1. Require the Contractor to pay liquidated damages in the amount of five hundred dollars (\$500.00) per day for each day the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - 2. In the event the Contractor willfully refuses or repeatedly fails to comply with the requirements of SMC Ch. 20.45, terminate the Contract; or
 - 3. Disqualify the Contractor from bidding on, responding to or being awarded a City contract for a period of up to five (5) years; or
 - 4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

H. SECURITY; LIABILITY; DAMAGES

Section 700. Performance Bond.

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond for seven and one-half (7.5) percent of the estimated annual compensation to the Contractor under the Contract. The bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least 90 calendar days before it expires.

The initial performance bond must be in place on or before April 1, 2001.

The bond shall be for the use and benefit of the City, with a surety company authorized to do business in the State of Washington and acceptable to the City. Said bond shall be conditioned that such Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, materialmen and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract, and shall be further conditioned that any person(s) performing such work or services, said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to, and subject to approval of the City Attorney's Office prior to its effective date.

Failure of the Contractor to furnish and maintain said Performance and Payment Bond shall be considered a material breach of this Contract and grounds of its immediate termination at the option of the City.

Section 710. Default of Contractor.

- a. The Contractor may be held in default of the Contract in the event the Contractor:
 - 1. Fails to perform ninety percent (90%) of the collections required by this Contract and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight hours; or

2. Has failed on three or more occasions of three (3) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Contract; or
 3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Contract, after having received notice of its obligation to do so.
- b. To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the Contractor may show cause why it should not be declared in default. In the event the Contractor fails to show, to the satisfaction of the City, why the Contractor should not be declared to be in default of this Contract, the City may make such declaration.
 - c. In declaring the Contractor to have defaulted on the Contract, the City also may order the Contractor to discontinue further performance of work under the Contract and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance bond and take any other action it deems advisable.
 - d. Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City pursuant to Section 240 hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.
 - e. In the event the surety on the Contractor's performance bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City pursuant to Section 240 hereof, for collection [and processing] purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such

lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

- f. In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.
- g. All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City be reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Section 720. Commitment of Equipment.

- a. Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory under Section 240 for use in the performance of this Contract (called "such property") shall be available for use in collecting Commercial Waste for the duration of this Contract. When provided, this Section applies to the replacement and substitute.
- b. From the date of the Contract and for its duration, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:
 - 1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Contract;
 - 2. In event the Contractor is in default and the surety on the Contractor's performance bond fails to assume or continue performance within 48 hours after notice to do so, allow the City to use without further documentation all or a portion of such property, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
 - 3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's interim usage; and
 - 4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the

requirements of subsections 1), 2) and 3) of this Section.

- c. To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all material contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld, and if the City does not respond within five business days, its approval shall be considered to have been given.

Section 730. Insurance.

- a. Contractor shall at all times during the term of this Contract, obtain and maintain continuously, at its own expense, and file with the City and the City's Risk Manager, evidence of a policy or policies of insurance as enumerated below:
 1. A policy of Commercial General Liability Insurance, written on an insurance industry standard occurrence form (CG 00 01), including all the usual coverages known as:
 - Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap/Employers Contingent Liability
 - Explosion, Collapse, or Underground (XCU)
 - Fire Damage

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$ 2,000,000	General Aggregate
\$ 2,000,000	Products & Completed Operations Aggregate
\$ 1,000,000	Personal & Advertising Injury
\$ 1,000,000	Each Occurrence
\$ 100,000	Fire Damage

Stop Gap Employers Liability

\$ 1,000,000	Each Accident
\$ 1,000,000	Disease - Policy Limit
\$ 1,000,000	Disease - Each Employee

If a claims made policy is used, it must have an unaltered extended discovery period provision.

2. A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto), an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage -

\$ 1,000,000 per person

\$ 2,000,000 per occurrence

3. A policy of Workers' Compensation. As respects Workers' Compensation insurance in the State of Washington, the Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If the Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Contractor shall so certify by a letter signed by a corporate officer and setting forth the limits of any policy of excess insurance covering its employees. The Contractor further waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance, of the Revised Code of Washington.

Any deductible or self-insured retention must be disclosed. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

If any such policy is written on a claim made form, the retroactive date shall be prior to or coincident with the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims made form coverage shall be maintained by Contractor for a minimum of two years following the expiration or earlier termination of this Contract, and Contractor shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

4. Additional Insured and Primary Insurance Provisions. Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured, and shall not be reduced or canceled without forty-five (45) days prior written notice to the City. In addition, Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the Contractor's insurance.
5. Evidence of Insurance. The following documents must be provided as evidence of insurance coverage:
 - a. A certificate of insurance, or a copy of the policy's declarations pages, showing the Insuring Company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
 - b. A copy of the endorsement naming The City of Seattle as an Additional Insured, showing the policy number, and signed by an authorized representative of the insurance company for Business Auto Liability, and for the Commercial General Liability policy a Form CG2010 (ISO) or equivalent. In the event the policy carries a blanket endorsement, a copy shall be provided in satisfaction of this requirement.
 - c. A copy of the "Endorsements Form List" to the policy or policies showing

endorsements issued on the policy, and including any company-specific or manuscript endorsements.

- d. A copy of an endorsement stating that the coverages provided by this policy to the City, or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.
 - e. A copy of A "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. Policy Rating. All policies shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.
7. Self-Insurance. Should Contractor be self-insured, under item (1), (2) and (3) above, a letter from the Corporate Risk Manager, or appropriate Finance Officer, is acceptable - stipulating if actuarially funded and fund limits; plus any excess declaration pages to meet the Contract requirements. Further, this letter should advise how Contractor would protect and defend the City of Seattle as an Additional Insured in their Self-Insured layer, and include claims handling directions in the event of a claim.
8. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate evidence of insurance as stated above for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein and applicable to their profession.

Section 740. Indemnity.

The Contractor shall defend, indemnify and save harmless The City of Seattle and the City's officers, employees and agents from any and every claim and risk, and from all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind (collectively "losses"), on account of injury to or death of any and all persons (including but not limited to the Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties), and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with or related to the work performed under this Contract, or in connection with or related to (in whole or in part by reason of) the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of The City of Seattle or any other property (upon which the Contractor is performing any work called for), except only those losses resulting from the negligence or willful misconduct of The City of Seattle or the City's officers, employees or agents.

For purposes of the Contractor's obligations under this Section 740, the Contractor hereby waives its immunity under industrial insurance, Title 51 RCW. The Contractor agrees that this

waiver was specifically and mutually negotiated by the City and the Contractor.

Section 750. Liquidated Damages.

The acts or omissions in the left hand column are a breach of this Contract; the relief for which shall be the amounts in the right hand column that are set as Liquidated Damages. Liquidated Damages may be deducted from the monthly payment to the Contractor.

OMISSION

LIQUIDATED DAMAGE

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|---|---|
| 1. Failure to collect spillage consistent with the provisions of Attachment C, Section C-240. | \$10 per incident |
| 2. Failure to collect missed Commercial Waste Container Collection within one business day (including Saturday) after a make-up request is given to the Contractor by the City. | \$25 each incident per day for Can or Cart customer; \$50 each incident per day for Detachable Container customer; to a maximum of \$250 per truck per day. |
| 3. Failure to provide for new Detachable Containers and permanent Drop Boxes within five (5) business days of a request; provided, however, this shall not apply to seasonal temporary requests. | \$50 per container per day |
| 4. Failure, after July 1, 2001, to deliver Detachable Containers to replace those needing repair or replacement within five (5) business days of a request. | \$25 per container per day |
| 5. Failure to provide additional Detachable Containers or Carts, provide proper containers or increase collection frequency within ten (10) business days of a request. | \$25 per container per day |
| 6. Failure, after July 1, 2001, to deliver or replace 32, 64 and 96 gallon Cans for any reason within five (5) business days of a request. | \$25 per container per day |
| 7. Greater than 50 complaints per month from April 1 to July 1, 2001, and thereafter greater than 10 complaints in any 30 day period reported by Commercial Waste customers of Contractors failure to respond to telephone inquiries, pursuant to Section 500 and Attachment C. | \$50 per each complaint above 10 complaints in any 30 day period |
| 8. In addition to progressive discipline in Section 215, unsatisfactory performance of collector after two (2) notices to Contractor to correct specific incidences involving the same address or collector in any six (6) month period, e.g. leaving gates or | \$200 each incident |

doors open, abusive language to customers, failure to return containers to their original location after collection, failure to perform collections, or similar violations.

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| 9. Soliciting Secondary Collection Area customers in violation of Section 105 of the Contract | \$500 per incident, plus refund to the City of all compensation paid to the Contractor for service to the solicited Secondary Collection Area customer. |
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In addition to the above damages, the Contractor shall not be paid for work not performed.

I. ANCILLARY PROVISIONS

Section 800. Independent Contractor.

The Contractor shall perform all work under this Contract as an independent contractor. Neither the Contractor nor any of Contractor's subcontractors, employees or agents are or shall be considered employees, agents, or servants of the City for any purposes under this Contract, or otherwise.

The Contractor shall have exclusive control of and the exclusive right to control the services and work performed by its employees, subcontractors and agents. The Contractor shall be solely responsible for the acts and omissions of its employees, subcontractors and agents. Nothing in this Contract shall be construed as creating a partnership or joint venture for any purpose between the City and the Contractor.

Section 810. Assignment; Subcontracting; Assignment of Duties.

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract without the prior written approval of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, the City's approval shall not unreasonably be withheld if the Contractor proposes to assign or transfer this Contract to an affiliate of the Contractor or to Contractor's parent corporation, provided that Contractor can establish to the reasonable satisfaction of the City that (a) the assignee or transferee will operate the Contract in substantially the same manner as the Contractor, will use substantially the same management and collection personnel as Contractor, and possesses substantially the same financial capability as Contractor and (b) the assignee or transferee is not affiliated in any way with the other company that has a Commercial Waste Collection contract with the City.

In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 815. Access and Audit.

The Contractor shall maintain in its office in King County full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting Contractor's

work on this Contract.

The City shall have access to the Contractor's office, records and operating facilities at any reasonable time, to enable the City to review and monitor Contractor's performance of the Contract.

The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by one of the following firms:

Deloitte & Touche
Arthur Andersen & Co.
Ernst and Young

KPMG Peat Marwick
Price Waterhouse Coopers

or by another reputable, competent certified public accounting firm with experience in auditing public service companies selected by mutual agreement of the City and the Contractor.

Audit information will be kept confidential, except as disclosure may be required by public disclosure laws.

Section 820. Uncontrollable Events.

The Contractor is not responsible for performance where an event beyond its reasonable control prevents performance of this Contract. Such events include: riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, inclement weather as provided in Section C-210 of Attachment C, explosions, fires, condemnation, labor strikes at facilities other than the Contractor's, lockouts by third parties, secondary boycotts, judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable cure by the Contractor. Such events do not include general economic conditions. If the Contractor is unable to perform its obligations under this Contract as the result of the occurrence of any such event, then the obligations of the Contractor and the City are suspended during such period. The Contractor shall exercise due diligence to resume performance as soon as practicable.

Uncontrollable Events which result in a permanent, detrimental change in circumstance for the Contractor or for the City may be the subject of a request for relief under Section 830.

Section 825. Change of Law.

- a. Changes in federal, state or local laws, such as tax law changes, that affect businesses or municipalities generally shall be to the benefit or detriment of the Contractor or City, without having any effect on the terms of or responsibilities under the Contract.
- b. Changes in federal, state or local laws or regulations that specifically affect the business of Solid Waste collection and which result in a detrimental change in circumstance for the Contractor in performing this Contract or for the City may be the subject of a request for relief under Section 830, *provided* that commercial recycling programs established by the City that are not mandatory shall not be considered a change in law under this section.
- c. Changes in federal, state or local laws or regulations of a general nature that affect the business of Solid Waste collection and which result in a material hardship for the Contractor in performing this Contract may be the subject of a request for relief by the Contractor under Section 830, *provided* that the only remedy for such a request shall be as set forth in this

subsection.

1. Any remedy imposed by the arbitrator shall be prospective only, and shall not include any remedy whatsoever for the period prior to the date of the arbitrator's order.
2. Should the arbitrator rule in favor of the Contractor under this subsection, the City shall then have the option, at any time after the date of the arbitrator's order, of terminating the Contract upon six-months' written notice.

Section 830. Request for Relief and Dispute Resolution.

- a. Either party may invoke a request for relief under Sections 820 and 825 in the following manner:
 1. Initial Notice. The party seeking relief shall do so by providing written notice to the other party within fifteen (15) days following the occurrence of the circumstance for which relief is sought.
 2. Follow-up Notice. Within thirty (30) days following the initial notice, the party seeking relief will provide another written notice that sets forth more specifically the reasons for the request and the relief being sought.
 3. Response. The other party will then have thirty (30) days from the follow-up notice to respond.
 4. Good Faith Discussion. The parties will then meet in a good faith attempt to resolve any disagreements.
 5. Arbitration. Should the parties fail to resolve their disagreements regarding the requested relief within thirty (30) days from the date of the response to the request, the matter will be taken to binding arbitration.
 6. Arbitration Rules. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures. A single arbitrator shall preside over the arbitration and, if the parties are unable to agree upon an arbitrator the AAA shall designate a list of five possible arbitrators and each party shall strike two arbitrators in alternating fashion, with the one remaining arbitrator serving as the actual arbitrator.
- b. If either party remains dissatisfied following the issuance of the arbitrator's decision, that party may provide written notice to the other party of its intent to terminate the Contract within ninety (90) days of the arbitrator's ruling, provided, however, that if the City initiates the request for relief it shall not have any right of termination. The party receiving the notice of intent to terminate shall then have ninety (90) days to:
 1. Rescind the original request for relief, whereupon the notice of termination shall be automatically cancelled; or
 2. Otherwise resolve the issues related to the original request for relief, whereupon the party desiring termination shall withdraw the notice of intent to terminate upon reaching

a satisfactory resolution of the disputed issues; or

3. Take no action and allow the termination to occur in accordance with the notice.
- c. A notice of intent to terminate the Contract under this Section shall be effective on the termination date stated in the notice, provided the following preconditions are met:
 1. City Termination. For termination by the City, termination may occur no sooner than three (3) years from the date of the notice.
 2. Contractor Termination. For termination by the Contractor, termination may occur no sooner than eighteen (18) months following the date of the notice.

Section 835. Violation of Antitrust or Corrupt Practice Laws.

In the event the Contractor is found to be guilty of a violation of antitrust or corrupt practice laws for acts performed in Washington during the term of this Contract, the City at its election may terminate this Contract by giving the Contractor written notice of the City's intent to terminate this Contract effective on the date designated by the City in the notice. For purpose of this Section, the "antitrust or corrupt practice laws" shall include all civil and criminal statutes, both state and federal, pertaining to the antitrust laws, fair practices acts, and any laws governing corrupt standards or practices. Further, for the purpose of this Section, the Contractor shall be considered to be "guilty" of a violation of such antitrust or corrupt practice laws if the Contractor or any of its officers or management employees: (1) enters a plea of guilty to a charge, (2) enters a plea of nolo contendere, or (3) is found guilty of a criminal violation or is held liable for a civil violation by the highest court or tribunal which considers the case.

Section 840. Contract Rights.

- a. The parties reserve the right to amend this Contract from time to time by mutual agreement in writing.
- b. Rights under this Contract are cumulative, and in addition to rights existing at common law.
- c. Payment by the City and performance by the Contractor do not waive their Contract rights.
- d. Failure by either party on any occasion to exercise a Contract right shall not forfeit or waive the right to exercise the right on another occasion. The use of one remedy does not exclude or waive the right to use another.

Section 845. Approvals.

Any approvals required under this Contract by the City or the Contractor shall not be unreasonably withheld.

Section 850. Entire Contract.

This Contract shall be interpreted as a whole and to carry out its purposes. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Section 855. Captions.

Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

Section 860. Law; Venue.

The laws of the State of Washington and Charter and Ordinances of the City shall govern the validity, construction and effect of this Contract. The venue for any claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County; provided, however, that this section shall not prevent either party from moving for a change of venue pursuant to RCW. 4.12.030, as amended from time to time.

Section 865. Notices.

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger, by certified or registered mail, return receipt requested, or by fax to the parties at the following respective addresses:

To the City:

Seattle Public Utilities
505 Dexter Horton Building
710 - 2nd Avenue
Seattle, Washington 98104
Phone: (206) 684-7666
Fax: (206) 386-0096

To the Contractor:

Waste Management of Seattle
7901 First Avenue South
Seattle, Washington 98108
Phone: (206) 762-1152
Fax: (206) 762-3416

Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the second business day after its mailing.

Section 870. Severability.

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Contract still fulfills its purposes, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 890. Effect of Subsequent Commercial Collection Contract.

The City is also negotiating with another commercial collection company for the collection of Commercial Waste. In the event the City contracts with the other collection company on material terms and conditions that are different or better than those contained in this Contract, the City agrees that the Contractor may elect to substitute those terms and conditions. "Material term(s)" as used in this section shall include any term or provision relating to or affecting the compensation Contractor receives for the services or Contractor's performance obligations under this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

CONTRACTOR

CITY

By: _____
JONATHAN M. ANGIN
Region Vice President

By: _____
DIANA GALE, Managing Director
Seattle Public Utilities

Dated: _____

Dated: _____

Authorized by Ordinance No. _____